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Re: Review of Nomination for Hudson Canyon National Marine Sanctuary

The American Clean Power Association (ACP)[1] welcomes the opportunity to provide comments on the National Oceanic and Atmospheric Administration's (NOAA) Review of Nomination for the Hudson Canyon National Marine Sanctuary (HCNMS). ACP appreciates the interest in maintaining the HCNMS nomination and recognizes that much of the proposed area contains unique and diverse ecosystems and areas of special national significance that warrant preservation.

We are concerned, however, that the proposed HCNMS is in the vicinity of both imminent and potential future offshore wind development. As such, our members have significant interest in ensuring that opportunities for offshore wind generation and transmission in the region are not unduly restricted by the nomination. We believe that modifying the boundaries of the proposed sanctuary can balance the complementary goals of conserving this marine ecosystem (without compromising areas needed to protect unique areas of national significance) and advancing offshore wind energy projects outside of the sanctuary, while decarbonizing the grid and creating thousands of jobs and billions in economic development along the New York and New Jersey coast. We look forward to working with NOAA, BOEM, and other key stakeholders to collaboratively find workable solutions to meet the President Biden's goal to responsibly deploy 30 gigawatts (GW) of offshore wind by 2030, combat climate change, protect the quality of the

[1] ACP is the national trade association representing the renewable energy industry in the United States, bringing together over 1,000 member companies and a national workforce located across all 50 states with a common interest in encouraging the deployment and expansion of renewable energy resources in the United States. By uniting the power of wind (both land-based and offshore), solar, storage, and transmission companies and their allied industries, we are enabling the transformation of the U.S. power grid to a low-cost, reliable, and renewable power system. Additional information is available at http://www.cleanpower.org.

environment including trust resources managed and protected by NOAA, create thousands of good-paying clean energy jobs, and advance environmental justice.

I. The East Coast Needs Offshore Wind to Reduce the Impacts of Climate Change and Incentivize the Economy

ACP applauds President Biden for making climate change mitigation a central priority of his Administration. In the Executive Order on Tackling the Climate Crisis at Home and Abroad (Climate EO), signed on January 27, 2021, President Biden called deployment of clean energy technologies, such as offshore wind, "critical for climate protection" and established that "[i]t is the policy of [the] Administration to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy … especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure."[2] The Climate EO further calls for the executive branch to "accelerate the deployment of clean energy . . . in an environmentally stable manner."[3]

A recent White House fact sheet touts the potential in the New York Bight area that surrounds the proposed HCNMS to produce cleaner and cheaper energy.[4] In the fact sheet, the Administration nots that wind energy development in the area is projected to generate up to 7 gigawatts (GW) of clean energy, power two million homes, and create thousands of jobs in manufacturing, construction, operations, maintenance, and service industries in nearby communities. The fact sheet also emphasizes the efforts the Administration is making promote cooperative ocean use, which have been memorialized in a recent MOU between NOAA and BOEM.[5]

Clean energy deployment and offshore wind development are massive priorities for the states of New York and New Jersey. New York State's Climate Act of 2019 established a goal of developing at least 9 GW of offshore wind by 2035, while New Jersey has established a goal of

[2] Executive Order 14008, available at https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad.
[3] *Id.*
[4] https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/12/fact-sheet-biden-harris-administration-races-to-deploy-clean-energy-that-creates-jobs-and-lowers-costs/
[5] January 11, 2022, Memorandum of Understanding between the National Oceanic and Atmospheric Administration And Bureau of Ocean Energy Management to Responsibly Advance Offshore Wind Energy at 1, available at https://www.noaa.gov/sites/default/files/2022-01/MOU%20NOAA%20BOEM%20SIGNED%20-%20011222.pdf.

obtaining 7.5 GW from offshore wind by 2035. Both states have dedicated significant capital to port development, job training, and supply chain investments. For instance, New Jersey's $350 million Offshore Wind Tax Credit provides reimbursement for capital investments in offshore wind industry-specific facilities located in New Jersey. On January 5, 2022, Governor Kathy Hochul announced New York's intent to invest an additional $500 million in ports, manufacturing, and supply chain infrastructure needed to advance its offshore wind industry, leveraging private capital to deliver more than $2 billion in economic activity while creating more than 2,000 good-paying green jobs.

In addition, the offshore wind industry, along with the efforts of the states of New York and New Jersey, is dedicated to creating good-paying jobs and advancing community needs. For example, New York's Climate Leadership and Community Protection Act created a Climate Justice Working Group with an important advisory role providing strategic advice for incorporating the needs of disadvantaged communities as the state seeks to achieve its goal of 9,000 megawatts of offshore wind by 2035 and makes broader moves toward a carbon neutral economy. The Climate Justice Working Group supports the individual needs of underserved communities statewide and is comprised of representatives from Environmental Justice communities, including three members from New York City communities, three members from rural communities, and three members from urban communities in upstate New York, as well as representatives from the State Departments of Environmental Conservation, Health, Labor, and NYSERDA.

In New Jersey, the second (and most recent) state solicitation for offshore wind capacity featured several project application requirements to address the needs of underserved communities. Specifically, the New Jersey Board of Public Utilities (NJBPU) required project applications to include the following components focused on traditionally disadvantaged communities: Both of the resulting winning project proposals, Ocean Wind II and Atlantic Shores Offshore Wind, specifically include plans (and direction from the NJBPU) to invest in workforce development in disadvantaged communities.

It is therefore critical for federal agencies, including NOAA, to consider how their actions would impact both the availability and cost of offshore wind to meeting Federal and state renewable energy goals, reducing the impacts of climate change, and providing significant

economic benefits to coastal communities. We urge NOAA to consider these efforts in determining whether to renew the HNCMS nomination and redrawing boundaries to allow for offshore wind development.

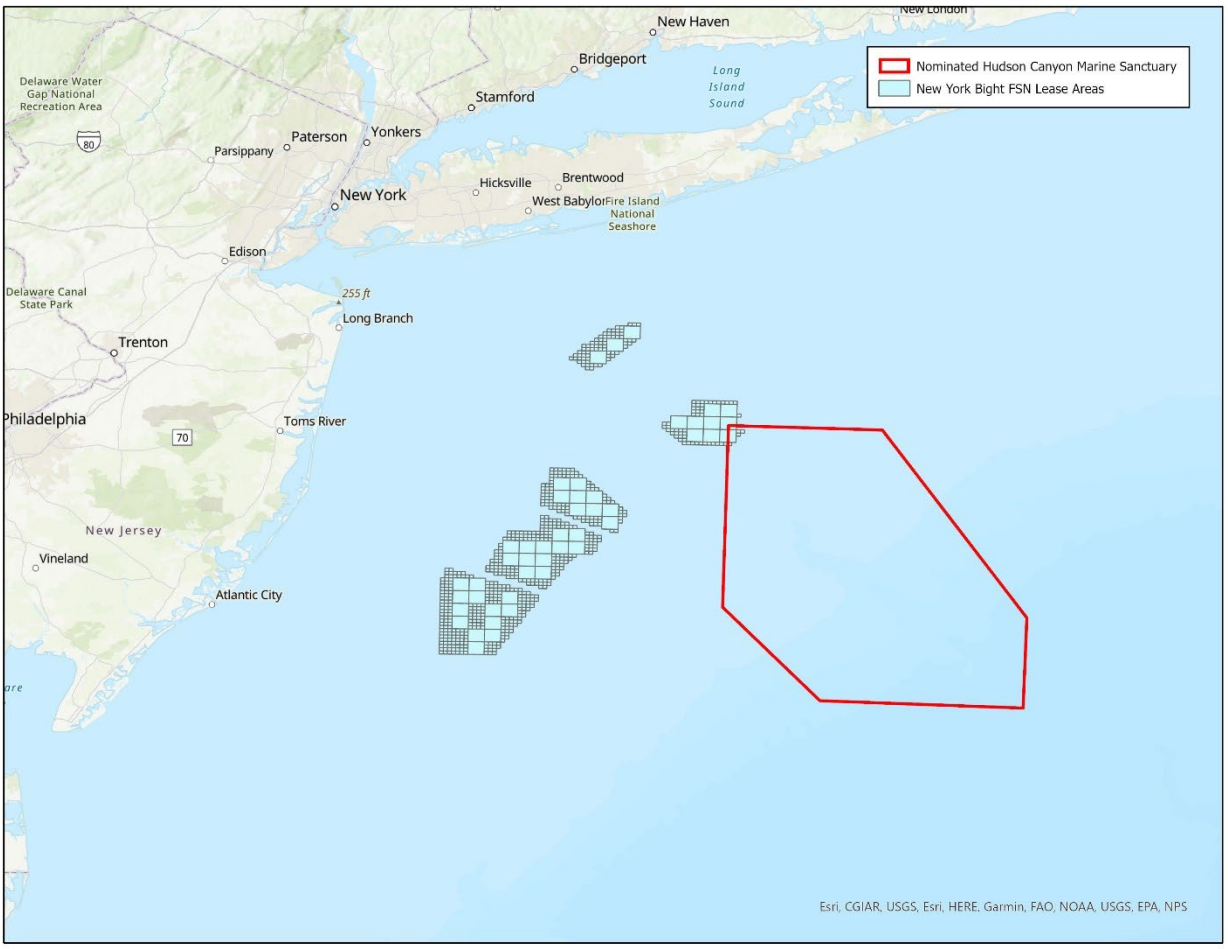
II. The Current HCNMS Nomination Boundaries would Create Challenges for Offshore Wind Projects

We first discuss the risks posed by the proposed HCNMS nomination to current and future offshore wind development and the BOEM leasing processes proceeding concurrently, as well as recommendations on how these two policy priorities can move forward together and complement each other. To do so, NOAA should consider the impacts the proposed boundary could have on current and future offshore wind projects in the New York Bight.

As a general matter, there is significant legal risk and uncertainty caused by the proposed boundaries of the HCNMS for offshore wind development. It is not clear what legal authority NOAA has to site offshore wind farms and related structures, e.g., transmission cables and electric service platforms—an authority ordinarily vested with BOEM but explicitly carved out by Congress with respect to national marine sanctuaries.[6] We are concerned that legal uncertainty could arise if NOAA were to not exclude areas that overlap with wind energy areas (WEAs) and potential export cable routes. This uncertainty will, at the very least, discourage investment in offshore wind in certain areas, or could, in practice, lead to delays or even project cancellations. Our particular concerns are discussed briefly below.

- **Hudson Central Lease Area:** On February 23, 2022, BOEM plans to auction 6 lease areas in the New York Bight region, totaling 488,201 acres auctioned. One lease area, Hudson Central (OCS A-0537; 71,522 acres), directly overlaps with the proposed boundary of the HCNMS. This could have significant impacts for offshore wind planning and development in that area, and severely limit the type of project that can be built, potentially leading to no project being built on that lease at all. At a minimum, NOAA should remove from the nomination the overlapping area with Hudson Central (OCS A-0537), along with a buffer zone to avoid any construction activities taking place within a sanctuary. The map below provides a clear view of the overlap of Hudson Central.

[6] 43 U.S.C. 1337(p)(10).



- **Deepwater Leases in the New York Bight Area:** The potential for offshore wind leasing in the New York Bight area is not limited to the lease areas up for auction later this month—there is potential for additional leasing in the Bight that may be appropriate for floating turbine technology. Indeed, NYSERDA has announced its intent to publish its Offshore Wind Master Plan 2.0, Deepwater, which will identify additional areas in the region that are deeper than 60 meters to recommend to BOEM for consideration as future Central Atlantic lease areas.[7] While offshore wind development is unlikely to occur within Hudson Canyon itself, floating offshore wind could be sited close enough to the canyon to be within the current HCNMS boundaries Furthermore, the proposed HCNMS could complicate efforts to site offshore transmission cables and offshore transmission lines and platforms intended to connect current and future offshore wind leases to the onshore electrical grid. It is too early to know whether and to what extent such conflicts

[7] Available at https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/About-Offshore-Wind/Master-Plan.

may arise, but such conflicts can be minimized or avoided so long as NOAA consults closely with BOEM, NYSERDA, and the offshore wind industry as its regulatory process advances, and adjusts the proposed sanctuary boundaries accordingly.

Based on the foregoing, NOAA should also update its Management Consideration #3 (Adverse impacts from current or future uses and activities threaten the area's significance, values, qualities, and resources) to reflect the current state of offshore wind development in the New York Bight. It is no longer accurate to state, as in the original 2016 HCNMS nomination, that offshore wind in the NYB is 81,130 acres about 18 km (11 mi), and that there is little potential in the short-term for wind turbines over the Hudson Canyon.[8].

III. Conclusion

We look forward to working with NOAA and other key stakeholders to collaboratively balance its ocean conservation objectives with the Administration's goal to responsibly deploy 30 gigawatts of offshore wind by 2030.

Sincerely,

Josh Kaplowitz, VP of Offshore Wind
American Clean Power Association

[8] https://nmsnominate.blob.core.windows.net/nominate-prod/media/documents/hudson-canyon.pdf